

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
(MACON DIVISION)

CERTUS BANK, N.A., as successor)
by assignment to ATLANTIC)
SOUTHERN BANK,)

Plaintiff,)

vs.)

GENE DUNWODY, JR., GENE DUNWODY,)
SR., JACK W. JENKINS, W. TONY)
LONG, and L. ROBERT LOVETT,)

Defendants.)

CIVIL ACTION FILE

NO. 5:14-cv-00069-CAR

DEPOSITION OF JACK W. JENKINS
OCTOBER 30, 2014
1:30 P.M.



CERTIFIED COURT REPORTERS

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1 APPEARANCES OF COUNSEL

2 On behalf of the Plaintiff:

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11 On behalf of the Defendants:

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18 * * *

19 MR. SMITH: We're on the record in the
20 case of CertusBank NA, a successor by
21 assignment to Atlanta Southern Bank versus Gene
22 Dunwody, Jr., et al., Case No.
23 5:14-cv-00069-CAR.

24 This is the deposition of Jack W. Jenkins.
25 This deposition is being taken by notice and
agreement of counsel and the parties for
purposes of discovery and all other purposes
permitted by the Federal Rules of Civil
Procedure.

Present in the room is Mr. Jenkins and his

1 counsel, Mr. Boyer.

2 Can you please swear the witness.

3 JACK W. JENKINS,
4 having been first duly sworn, was deposed and testified as
5 follows:

6 EXAMINATION

7 BY MR. SMITH:

8 Q Mr. Jenkins, what is your current home and
9 work address?

10 A Current home, 2649 Stanislaus Circle,
11 Macon 31204. Work is 327 3rd Street, Macon 31202,
12 I think.

13 Q Were you a member of Capricorn Center,
14 LLC?

15 A Yes.

16 Q What was the purpose of that entity? What
17 was its business purpose?

18 A To develop property in Macon downtown on
19 MLK.

20 Q Are you familiar with an entity named 615
21 5th Street, LLC?

22 A I'm not sure about that now.

23 (Whereupon, previously marked Exhibit 24
24 entered.)

25 BY MR. SMITH:

1 Q I'm handing you what has been marked as
2 Exhibit 24. This is a letter that an attorney at
3 Greenberg-Traurig sent to Mr. Boyer, your counsel.

4 Have you ever seen this E-mail?

5 A Don't think so.

6 Q This E-mail references a delay of
7 foreclosure in exchange for receipt of a \$50,000
8 payment on several entities.

9 Do you see that?

10 A Uh-huh, yes, sir.

11 Q And one of those entities is 615 5th
12 Street, LLC.

13 Do you know if you were a member of that
14 entity?

15 A I don't know. I don't think so. I -- I
16 just remember Capricorn Center, LLC was
17 my understanding -- that was my understanding of my
18 involvement.

19 Q Okay. Did Capricorn Center, LLC take out
20 loans from Atlantic Southern Bank?

21 A Yes.

22 Q To your knowledge, were those loans fully
23 paid back?

24 A I'm not sure the status of -- of what was
25 paid back or how much was paid back.

1 Q Okay. Did you guarantee those loans?

2 A I think parts -- to a limited extent I
3 think I did.

4 (Whereupon, previously marked Exhibit 6
5 entered.)

6 BY MR. SMITH:

7 Q Okay. If you could turn to Exhibit 6,
8 please.

9 This is a Guaranty dated April 16th,
10 2010 that you signed in favor of Atlantic Southern
11 Bank, correct?

12 A Yes.

13 Q Is that your signature on Page 3?

14 A Yes.

15 Q Are those your initials on each of the
16 pages?

17 A Yes.

18 Q Is this a true and correct copy of the
19 document that you signed?

20 A I believe so.

21 Q This document references, on the first
22 page, a Promissory Note dated April 16th, 2010
23 from Capricorn Center in the amount of \$176,452.13.

24 Do you see that?

25 A Yes.

1 Q Was it your understanding, when you signed
2 this, that you were guaranteeing that loan up to the
3 cap that's referenced in Section 2?

4 A Right, up to a -- there was a liability, a
5 \$33,045 limit to my liability or cap to my liability
6 is my understanding.

7 Q You're an attorney, correct?

8 A Yes.

9 Q And there's some other language in that
10 sentence, as well. It says: "My liability will not
11 exceed \$33,045 of the principal amount outstanding
12 at default plus accrued interest, attorney's fees
13 and collection costs, when allowed by law, and all
14 other costs, fees and expenses agreed to be paid
15 under all agreements evidencing the debt and
16 securing payment of the debt."

17 Based on that language, was it your
18 understanding, when you signed this, that the cap
19 was to be applied to the principal amount, but that
20 there there could be accrued interest and attorney's
21 fees and collection costs on top of that, correct?

22 A Right, uh-huh, yes.

23 (Whereupon, previously marked Exhibit 15
24 entered.)

25 BY MR. SMITH:

1 Q Okay. If you could turn to Exhibit 15,
2 please.

3 A Okay.

4 Q This is another Guaranty that's dated
5 April 28th, 2011 that you signed in favor of
6 Atlantic Southern Bank, correct?

7 A Yes.

8 Q Is that your signature on Page 3?

9 A Yes.

10 Q Are those your initials at the bottom of
11 each page?

12 A Yes.

13 Q Is this a true and correct copy of the
14 Guaranty that you signed?

15 A I believe so.

16 Q This Guaranty, in Section 2, references a
17 Promissory Note No. 402-06-4300 dated April 28th,
18 2011 from Capricorn, LLC in the amount of
19 \$1,286,369.29.

20 Is it your understanding, when you signed
21 this, that you were guarantying that note up to the
22 liability cap that's referenced in Section 2?

23 A Yes.

24 Q Okay. And like the other Guaranty, that
25 has a specific number for a cap amount for the

1 principal, and in this case it says \$241,280; is
2 that correct?

3 A Right.

4 (Whereupon, previously marked Exhibit 21
5 entered.)

6 BY MR. SMITH:

7 Q Okay. If you could turn to Exhibit 21,
8 please.

9 A Okay.

10 Q This is a letter dated August 7, 2012 that
11 was sent to you among other parties.

12 Do you recall receiving a copy of this
13 letter?

14 A I think so, yes.

15 Q Is this a true and correct copy of the
16 letter that you received, as far as you can tell?

17 A Yes.

18 Q There are amounts asserted as outstanding
19 on Page 2 of the letter --

20 A Right.

21 Q -- under the \$1.2 million note, roughly
22 \$1.2 million note.

23 As of August 7, 2012, do you have any
24 reason to believe that the numbers that are asserted
25 here are either correct or incorrect?

1 A I don't know if it's correct or incorrect.

2 Q Okay. And that's what I was asking you.

3 You wouldn't have any reason to believe
4 it's incorrect?

5 A That's right.

6 Q And you wouldn't have any reason to
7 believe that it's correct?

8 A That's true.

9 Q You have no knowledge either way?

10 A Right.

11 (Whereupon, previously marked Exhibit 22
12 entered.)

13 BY MR. SMITH:

14 Q If you could turn to Exhibit 22, please.

15 This is another letter dated
16 August 17th, 2012 sent to you by Michael Wing of
17 my firm Greenberg-Traurig.

18 Do you recall receiving this letter?

19 A Yes.

20 Q Is this a true and correct copy of the
21 letter that you received?

22 A As far as I know.

23 Q And with regard to the 176,445.13 note to
24 Capricorn or that Capricorn signed, do you have any
25 reason to believe that the amounts that are asserted

1 as outstanding as of August 17, 2012 are incorrect?

2 A No.

3 Q Do you have any idea when the last payment
4 on either of these two loans was made?

5 A No.

6 Q And, again, you're just not sure what
7 amounts, if any, are outstanding, as we sit here
8 today, under these loans?

9 A That's right.

10 MR. SMITH: I don't have any other
11 questions.

12 MR. BOYER: I don't have any questions.

13 MR. SMITH: The deposition of Mr. Jenkins
14 is concluded.

15 Thank you, Mr. Jenkins.

16 THE WITNESS: You're welcome.

17 (Deposition Concluded)
18
19
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C E R T I F I C A T E

- - - - -

STATE OF GEORGIA:

FULTON COUNTY:

I hereby certify that the foregoing transcript was taken down as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 10 represent a true and correct transcript of the evidence given upon said hearing, and I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in the action.

This the 1st day of December, 2014.

KELLY A. EMERY, CCR-B-941

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